

Appendix

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STATE OF WASHINGTON
ENVIRONMENTAL HEARINGS OFFICE

4224 - 6th Avenue SE, Bldg. 2, Rowe Six
P.O. Box 40903, Lacey, WA 98504-0903

To: Water Disputes Task Force
From: Kaleen Cottingham *Kaleen*
Subject: Recent Survey of parties
Date: July 15, 2003

The Environmental Hearings Office recently contracted for a survey of parties appearing before the various boards that comprise the Environmental Hearings Office. In the Water Disputes Task Force's efforts to improve the water adjudications process, I thought you'd like to see a summary of the survey's results. We were pleased to find the high response rate and the positive contributions from the wide variety of interviewees. The primary weakness apparent from the survey is how pro se appellants feel about quasi-judicial processes. This type of feedback can help the Task Force as it evaluates improving or modifying provisions for water adjudications and other water related matters.

Our interest in a customer survey stemmed from the recent Governor's Executive Order on Service Delivery, as well as our goal to continually improve our processes. We have tried in the past to obtain feedback through a survey on our web page, but have received virtually no responses. We are also limited in what we can ask parties by a prohibition on ex parte contact between the judges and the participants. Finally, we believed that many of the attorneys that practice before us regularly might not be forthcoming unless confidentiality was assured. All these reasons caused us to look for an outside entity to conduct our survey. We sought competitive bids from pre-authorized contractors, and selected Hebert Research as our survey contractor. We worked closely with Hebert Research in the scope of the potential interviewees and in the nature of the survey questions. We relied on our extensive data system to provide all the information about the parties and attorneys for use in the survey process. We used all cases that had been closed from April 2002 to April 2003.

I have attached verbatim pages from the report. Included are the objectives and methodology of the survey, the questionnaire, and the key findings.

We are currently revising our biennial strategic plan and will be incorporating changes resulting from this survey into our process improvement efforts. We intend to focus on improving the ability of the pro se appellants to participate in the adjudicatory process, improving our web page, and improving the written materials that are sent to parties. We will also be making other improvements as appropriate.

If you have any questions, please feel free to contact the Environmental Hearings Office.

Objectives

Research Objectives:

The following objectives were addressed in conducting research for the EHO:

1. Assess the promptness and accuracy of answers received and instances where improvements are needed;
2. Determine the acceptability of the amount of time between filing the appeal and the hearing;
3. Examine the value of the pre-hearing conference and how it may be improved;
4. Evaluate the clarity with which procedures were explained by the presiding officer;
5. Assess the degree to which rulings made in the course of the hearing were clearly explained;
6. Determine if participants felt they received a fair opportunity to present their case and, if not, why they felt the opportunity was not fair.
7. Assess the degree to which participants felt board members were knowledgeable regarding their case;
8. Examine the degree to which participants felt board members were open-minded and listened to all sides;
9. Determine the perceived level of courteousness of board members;
10. Assess the perception of fairness of board members;
11. Evaluate the clarity of the board's written decision;
12. Determine the aspects of the proceedings respondents held in highest regard;
13. Determine how the process may be improved;
14. Examine satisfaction with mediated resolutions and how the mediation process may be improved; and
15. Assess awareness of information available on the EHO website, the utility of information currently available, and how the Website may better serve the needs of attorneys and pro se parties.

Methodology

A total of 87 surveys were completed for the EHO. The EHO provided lists of participants in their hearings and mediation processes, broken down into attorneys, mediation, and Pro ses. A comprehensive list of participants was developed, with each person being entered only once. Participants could qualify for two different aspects of the survey, both for the hearings process and for mediation. For ease of interviewing and managing the sample, these two aspects were combined into a master questionnaire. The questionnaire had initial questions up front that all interviewees answered, and then had a section for the hearing participants, and for mediation participants. Within the hearings or mediation section, there may have been questions which only applied to attorneys or only applied to Pro se participants. The response rate, which represents the proportion of the population who agreed to participate in the research, was 97.6 percent. The overall incidence rate, which represents the proportion of the population qualified to participate in the survey, was 71.3 percent. Some people who failed to qualify said that although they were listed on the case, they did not take part in the process; others said their case was settled before it went through the mediation or hearings process. In the case of Pro se interviewees and mediation interviewees, all potential interviews were exhausted. This means that the interviewees in the survey constitute a census of participants, and there is no margin of error. A total of 18 out of 67 Appellant Hearing Attorneys were interviewed. Because of the small sample size, the margin for error is +/-10.5 percent. Likewise, 23 out of 72 Respondent Hearing Attorneys were interviewed. The margin for error here is +/-8.6 percent.

In total, the breakdown of interviewees is as follows:

Appellant Hearings Attorneys (AHA): 18 interviews

Respondent Hearings Attorneys (RHA): 23 interviews

Pro ses: 28 interviews

Mediation Appellants (attorneys & independents): 18 interviews

Mediation Respondents (attorneys & independents): 17 interviews

The initial goal was to complete 30 interviews among hearings attorneys, both appellant and respondent (15 each); 30 Pro se interviews (out of a possible 42 names originally given) and 30 mediation interviews, both appellant and respondent (10 appellant attorneys, 10 appellants, and 10 respondents, both attorney and non-attorney). A letter announcing the survey was sent out to all potential participants with the dates of the survey. Interviewees were generally highly willing to participate in the survey and to offer their opinions. Of the 206 potential participants, only two refused and one terminated the interview part way through. Completes were tracked by each interviewer for each group of respondents, and sample and completes both were reviewed on a daily basis by the project analyst. Participants were called up to 10 times each to try to secure their cooperation for this research.

Key Findings

Administrative Staff

- Administrative staff was rated well overall, particularly by Respondent Attorneys, but even Pro ses gave some of their highest ratings for the administrative staff. However, nearly every group did not consider the contribution of the administrative staff to be of primary importance relative to their overall satisfaction with the process. The administrative staff should be commended for doing a good job of facilitating the process and maintaining its high level of service. The one recommendation for improvement is simply the turn-around time: the suggestion made most often was that response time could be shorter.

Website

- Pro ses rarely use the website, but the reasons why are unclear. It may be they are not aware of the website; they may not be aware of the value of information or how to use the information on the website.
- Attorneys for both Appellants and Respondents are frequent users of the website.
- Users of the website considered the case histories to be the most important part of the website. However, they wanted to be able to search by type of case or type of law being ruled on, rather than by year. The year, as a search category, is not a strong search criteria. As well, having the full history of cases would be highly beneficial to users.
- While website users find it fairly easy to navigate, improvement is needed. Consider using drop-down menus on the navigation bar, so users know what is under each main section. This improves their efficiency and reduces frustration with not finding the appropriate topic in an area.
- The Website provides needed information regarding the hearing process, but is much less complete in providing needed information regarding mediation. Develop a separate section for mediation containing additional process information and listing example case histories and the compromises achieved.

Hearings Process

- The prevalent feeling among all interviewees is that the speed in which a case is brought to resolution needs to be improved. Pro ses, in particular, find the hearings process to take too long.
- The message to Pro ses that help with hearings procedures is available to them needs to be made more forcefully by the presiding officer.

- The survey clearly indicates Pro ses are poorly informed and feel disconnected to the process. Both written and verbal information should be made available to Pro ses informing them that help in understanding procedures is available. This step would hopefully mean Pro ses would seek assistance more often and feel more in command of their appeal.
- The presiding officer is doing a fine job of informing parties that mediation is available, however, all individuals new to the process (i.e., Appellant Attorneys and Pro ses) are not receiving the message. The presiding officer should communicate verbally and in writing that mediation is available and secure feedback from participants indicating they fully understand the mediation alternative.
- By and large, attorneys did not feel the need for procedural assistance. Pro ses, however, often felt that they had no real understanding of what was coming. Attorneys seconded this idea by saying that even with Pro ses being given leeway, they still needed a much stronger education program if the Pro se is to participate effectively in proceedings.
- The two primary concerns among attorneys about the motions practice were: 1) make decisions in a more timely fashion, and 2) improve the Board's understanding of the law or have more experienced judicial people on it. Several attorneys mentioned situations where they felt the Board did not understand the issues as well as they should have or else that the procedure to be followed was not well defined.
- In two out of three Pro ses hearings, motions are filed and, in half of those cases, Pro ses did not know how to respond. Those who knew how to respond either asked for assistance or had been through the process before. Clearly, the procedural assistance provided by EHO to those who requested it was helpful. Provide information in writing that clearly indicates the responsibilities and actions open to Pro ses when motions are filed. When the presiding officer makes Pro ses aware that procedural assistance is available, each area of opportunity for a response, such as when a motion is filed, should be highlighted so Pro ses recognize it as an important area of concern for the case.
- The majority of Pro ses are not fully cognizant of the fact that deadlines can be extended before the hearing. The communication to Pro ses that deadlines can be extended needs to be made more forcefully and through a variety of communication channels.
- The hearings process is moderately satisfying to participants as a whole. Pro ses have low satisfaction with the hearings process. The hearings process needs improvement for all parties and substantial improvement for Pro ses. Parties who won their case showed higher satisfaction with the hearings process than those who lost.

- Appellant Pro ses who do not settle their case have a one in six chance of winning. Appellants represented by an attorney have a two in five chance of winning their case, more than double the Pro se's chances. In contrast, respondents who are represented by an attorney have a 70% chance of winning their case. These percentages indicate that Pro ses are at a clear disadvantage and emphasize the Pro se's need for substantial education and support from EHO.

Mediation

- Mediation is perceived as a desirable alternative to the hearing process. Mediation saves both time and money and holds out the promise of resolutions which are more constructive than the win/lose outcome of a hearing.

Derived Importance Findings

Mediation – Pro Ses

- It is clear that of all groups, Pro ses demonstrate the greatest needs for both mediation and the hearings process.
- Nearly all areas tested are regarded by Pro ses as important elements of overall satisfaction with the mediation process. Pro ses who went through mediation considered the strengths of EHO to be the courteous and respectful attitude expressed by staff and the impartiality of the mediator. In all other dimensions of performance tested, improvement is needed to raise Pro se satisfaction with the mediation process.
- Pro ses strongly question the fairness of the proceedings. Ratings of fairness appear to be nearly synonymous with their level of satisfaction. Pro ses need more help from staff. Providing prompt and accurate information remains highly important. The actions of the mediator also strongly affect Pro se satisfaction. To further improve Pro se satisfaction, mediators must take additional steps to assure Pro se interests are fully made known and assure Pro ses that the opposition respects the Pro se and is not dominating the mediation.

Hearing – Pro Ses

- The ability to clearly understand the Board's decision is nearly synonymous with overall satisfaction and substantiates the key importance of presenting a written decision that will be easily comprehended by Pro ses. Pro ses need to be shown that their case was fully understood by the Board.
- The quality of the scheduling letter has less influence on satisfaction than the information shared at the pre-hearing conference. This information should be improved in terms of clarity and completeness so Pro ses have a full understanding of how subsequent events will unfold and the procedures involved.

- Improving the attentiveness of the Board Members, finding ways the Board can communicate its fair treatment and expanding the help provided by staff will contribute to raising the satisfaction of Pro ses with the hearings process.
- Pro ses are very aware of being treated courteously and respectfully by the staff. However, this treatment bears little relationship to overall satisfaction.

Mediation – Appellants (Attorneys and Appellant Pro ses Combined)

- Mediation Appellants reported no relative strengths that were highly related to overall satisfaction.
- Mediation Appellants were quite similar to Pro ses in the categories of needs they expressed relative to mediation.
- Four areas loomed very close to determining overall satisfaction: the essential contribution of the mediator, feeling the agreement was fair, the impartiality of the mediator and assuring the opposition did not dominate the mediation. Improvement in these areas is key to improving overall satisfaction.
- Other areas to improve include helping Mediation Appellants understand they are respected by the opposition, fully and completely making the appellant's position known and providing them with more accurate information from staff.

Hearing – Appellant Attorneys

- Appellant Attorneys found the relative strengths of EHO to be the scheduling letter, the information received at the pre-hearing conference, and the courtesy and respect they received from the Board.
- Of greatest importance to Appellant Attorneys for their overall satisfaction is that Board Members fully attend to their hearing presentation and treat them fairly. The accuracy and completeness of the final report in illustrating the Board's rich grasp of the information they presented will enhance satisfaction for Appellant Attorneys. Other improvements which would add to satisfaction include more detailed information regarding the hearing's order of events and procedures, and reducing the amount of time to resolve the case.

Mediation – Respondents (Attorneys and Respondent Pro ses Combined)

- Mediation Respondents rated staff support very highly, but in terms of their overall satisfaction and other factors, these activities were relatively unimportant.
- Of greater importance for their satisfaction were the actions of the mediator. Mediation Respondent satisfaction can be improved by providing increased assurance that the Mediation Respondent's interests were fully and completely made known and assuring that the opposition did not dominate the mediation.

Hearing – Respondent Attorneys

- Of all party groups tested, Respondent Attorneys expressed the fewest needs. The greatest strengths of EHO that were highly related to overall satisfaction were fair treatment by the Board and the clarity of the written decision.
- To raise satisfaction among Respondent Attorneys, reduce the length of time to resolve the case and, as for Appellant Attorneys, provide a report that accurately and completely illustrates the Board's rich grasp of the information presented by the Respondent Attorney.
- While all areas dealing with the administrative staff were highly rated, they proved to be relatively unrelated to overall satisfaction compared to other factors tested.

Appendix
Questionnaire
Environmental Hearings Office
Master Questionnaire
June 2003

0409-010, 020, 030

Version 1.0

Hello, my name is _____, and I'm a research assistant for Hebert Research, an independent research firm in Bellevue, Washington. We are currently conducting a survey on behalf of the Environmental Hearings Office in order to improve their processes. You should have received a letter in the mail informing you of this survey. This call is for research purposes only and does not involve sales of any kind. Your individual answers will remain strictly confidential. Would now be a good time to speak with you? **[IF NO, SCHEDULE CALLBACK]**

Before we begin, we realize that you may have been involved with the Environmental Hearings Office for multiple cases. If this is so, please pick one case and answer the following questions based on that one case.

S1. First of all, I need to verify your position. Were you the attorney for the appellant, attorney for respondent, the appellant, or the respondent?

*More information: the appellant is the person who is appealing a decision they disagree with.
The respondent is the person who is defending that decision.*

- | | |
|----------------------------|-------------------|
| 1. Attorney for appellant | SKIP TO S3 |
| 2. Attorney for respondent | SKIP TO S3 |
| 3. Appellant | CONTINUE |
| 4. Respondent | CONTINUE |

S2. Did you represent yourself (pro se) or did you have an attorney represent you?

1. Represented myself (pro se)
2. Had attorney to represent me

S3. Did you, on this case with the Environmental Hearings Office, go through the hearing process ONLY, the mediation process ONLY, or both?

- | | |
|---------------------------|-------------------|
| 1. Hearings process only | SKIP TO Q1 |
| 2. Mediation process only | CONTINUE |
| 3. Both | CONTINUE |

S4. Was the case settled in mediation?

1. Yes
2. No

EHO STAFF – ALL RESPONDENTS

For each of the following statements, please rate the statement on a scale of 0-10, where 0 means you do not at all agree and 10 means you strongly agree. Please tell me "NA" if you did not deal with the administrative support staff on this issue.

1. The administrative support staff in the Environmental Hearings Office responded promptly to my questions.
2. The administrative support staff answered my questions with accurate information.
3. The administrative support staff were courteous and respectful toward me at all times.
4. The administrative support staff were very helpful to me in responding to my requests.
5. How could the staff at the Environmental Hearings Office have improved the assistance they provided to you? **VERBATIM**

WEBSITE

6. Have you accessed the EHO Website for information at any time?
 1. Yes
 2. No
 3. Don't know/Refused

IF Q6 = 2 or 3, SKIP TO Q10

7. Using the 0-10 scale where 0 is very poor and 10 is excellent, how would you rate the ease with which the Website can be navigated?
8. Did the EHO Website provide the information you needed?
 1. Yes
 2. No
 3. Don't know/refused

9. What did you find to be most helpful about the Website and how would you recommend that it be improved? **VERBATIM**

ASK ONLY IF S3 = 1 OR 3; OTHERWISE SKIP TO Q34

For each of the following statements about the hearings process, please rate the statement on a scale of 0-10, where 0 means you do not at all agree and 10 means you strongly agree.

10. Considering the complexity of the case, the total amount of time needed to bring the case to a resolution was reasonable.
11. The information I received in the scheduling letter from EHO clearly explained everything that would be expected (of me) at the pre-hearing conference.
12. The pre-hearing conference gave me a very helpful understanding of the expected sequence of events from the beginning of the appeal all the way to the final decision.

13. The pre-hearing conference clearly detailed each stage or step of the appeal process and what my responsibility would be at each stage or step.

ASK ONLY IF S2 = 1; OTHERWISE SKIP TO Q15.

14. At the pre-hearing conference, did the presiding officer inform you that help in understanding hearing procedures was available to you? *(ADDITIONAL INFORMATION: Help may take the form of person to person discussions with EHO staff via telephone, accessing the EHO handbook on the Website, or receiving examples of documents which must be submitted.)*

1. Yes
2. No

15. During the pre-hearing conference, did the presiding officer inform you that mediation was available as an alternative for resolving your case?

1. Yes
2. No
3. Don't remember

16. What recommendations can you offer that would help EHO improve the way in which it provides procedural assistance? **VERBATIM**

ASK ONLY IF S1 = 1 or 2; OTHERWISE SKIP TO Q18

17. Did you participate in the motions practice?

1. Yes
2. No

IF NO, SKIP TO Q22

17a. How do you think it could be improved? **VERBATIM**

ASK Q18 ONLY IF S2=1; OTHERWISE SKIP TO Q22

18. Were motions filed at any point in your case?

1. Yes
2. No

IF NO, SKIP TO Q22

19. Was it clear to you how to respond to the motions at the time they were filed?

1. Yes
2. No
3. Don't know/refused

20. Did you ask EHO for procedural assistance in dealing with the motions?

1. Yes **CONTINUE**
2. No **SKIP TO Q21b**

ASK ONLY IF Q20=1

21a. What did the staff do that was helpful or not helpful with the assistance you received? **VERBATIM**
SKIP TO Q22

ASK ONLY IF Q20=2

21b. NO: Why didn't you ask for assistance? **VERBATIM**

22. Before the hearing, were you aware that you could request that deadlines be extended if you needed additional preparation time?

1. Yes
2. No
3. Don't know/refused

Using the 0-10 scale where 0 is do not at all agree and 10 is strongly agree, please rate the following statements.

23. Prior to the hearing, I received full information on the hearing's order of events and procedures so I understood what would happen throughout the actual hearing proceedings.

DURING THE HEARING

24. The Board Members treated me fairly throughout the hearing.

25. The Board Members treated me with courtesy and respect.

26. The Board Members were attentive to the presentation of my case.

27. I was able to clearly understand the Board's written decision in the case.

28. The written decision indicated to me that the Board Members clearly understood the most important elements of the case I presented.

29. If you requested mediation but did not receive it, what was the reason you did not engage in mediation in the case? **VERBATIM**

30. Using the 0-10 scale where 0 is not at all satisfied and 10 is completely satisfied, how would you rate your overall satisfaction with the quality of the entire appeal and hearing process from beginning to end?

31. Did you win, lose or settle the case?

1. Won
2. Lost
3. Settled
4. Don't know/refused

32. How could the hearing process be improved? **VERBATIM**

ASK ONLY IF S2=1

33. What things, if any, could the EHO have done to aid or enhance your ability to participate in the process? **VERBATIM**

IF S3=3, ASK THE FOLLOWING

You noted that you participated in both the mediation and the hearings process. We do need respondents to evaluate the mediation process as well. Would I be able to ask you some additional questions about the mediation process now, or is there a good time I could call you back to conduct that survey?

1. Yes, go ahead

GO TO Q34

2. Yes, but at another time

SCHEDULE CALL BACK

3. No, I'm not interested in doing anything further

SKIP TO CLOSING

MEDIATION – ASK ONLY IF S3 = 2 or 3 OTHERWISE SKIP TO CLOSING

For each of the following statements about the mediation process, please rate the statement on a scale of 0-10, where 0 means you do not at all agree and 10 means you strongly agree.

34. The mediator managed the discussion so I always felt the opposition had respect for me as an individual.

35. The mediator helped to make sure my interests were completely and fully made known during the mediation process.

36. The mediator was impartial throughout the process.

37. The mediator ensured that the opposition did not dominate the mediation.

ASK ONLY IF S4=1; OTHERWISE SKIP TO Q42

38. The agreement was fair from my standpoint.

39. I felt the agreement was fair for the opposition.

40. The actions of the mediator were essential to resolving the case.

41. What were the advantages to you, if any, in using mediation instead of going to hearing in your case? **VERBATIM**

ASK ONLY IF S4=2; OTHERWISE SKIP TO Q44

42. Why didn't the mediation result in a settlement? **VERBATIM**

43. Even though the mediation was not successful, what positive outcomes came out of the proceedings? **(PROMPT: Anything regarding the issues, the facts, the lines of communication, etc.) VERBATIM**

44. What do you consider to be the major contribution of the mediator to the process?

VERBATIM

45. Using the 0-10 scale where 0 is not at all satisfied and 10 is completely satisfied, please rate your overall level of satisfaction with the mediation process.

46. Was the mediation process fair?

1. Yes
2. No
3. Don't know/refused

47. Why do you feel that way? **VERBATIM**

48. Based on your mediation experience, would you participate in mediation again?

1. Yes
2. No
3. **ATTORNEYS ONLY** If my client wants to use this process, yes.
4. Don't know/refused

ASK ONLY IF Q48=1 OR 2; OTHERWISE SKIP TO Q50

49. Why did you give that answer? **VERBATIM**

50. What recommendations can you offer the Environmental Hearings Office that would improve the mediation program? **VERBATIM**

CLOSING

Those are all of the questions I have for you. Thank you very much for your participation in our survey.

Date: _____

Interviewer: _____